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IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1975
NO. 75-1757

MICHAEL PATRICK CLANCEY,
Petitioner,
vs.

THE UNITED STATES HOUSE OF
REPRESENTATIVES; CARL ALBERT,
INDIVIDUALLY AND IN HIS OFFICIAL
CAPACITY AS SPEAKER OF THE UNITED
STATES HOUSE OF REPRESENTATIVES;
JOHN J. FLYNT, JR., INDIVIDUALLY
AND IN HIS OFFICIAL CAPACITY AS THE
CHAIRMAN OF THE COMMITTEE ON
STANDARDS OF OFFICIAL CONDUCT
FOR THE UNITED STATES HOUSE OF
REPRESENTATIVES; AND ANDREW J.
HINSHAW, INDIVIDUALLY AND IN HIS
OFFICIAL CAPACITY AS CONGRESSMAN
IN THE UNITED STATES HOUSE OF
REPRESENTATIVES,

MOTION
FOR
LEAVE TO
FILE AND
PETITION
FOR WRITS
OF PRO-
HIBITION
AND
MANDAMUS

Respondents.

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Now comes MICHAEL PATRICK CLANCEY, and moves
that the above entitled honorable court grant him leave to file
the Petition for Writs of Prohibition and Mandamus annexed
hereto and agreeably to its prayer that the United States

House of Representatives and the other named defendants, be
commanded to vacate Rule 43, Section 10 of the House Code
of Official Conduct and be prohibited from acting or not
acting in accordance therewith, on the ground that said rule is
unconstitutional.

The facts giving rise to the present application are set forth
in detail in the Petition annexed, and there is appended to said
Petition, a certified copy of the aforementioned Rule 43.
Section 10.

The matter must be decided prior to the November General
Elections which, as stated in the petition, will render the
matter "moot" therefore denying all U.S. Citizens the
protection needed from the aforementioned rule and its
possible future enactment.

The relief sought was granted in the case of Adam Clayton
Powell vs. McCormack, (Speaker of the House) by this
honorable court. See 138 O.T. 68, 395 U.S. 486. (1969)

WHEREFORE, Petitioner prays that this motion for leave
to file be granted; or, in the alternative, that this motion for
leave to file be set down for oral argument, following the
course pursued in Collett and related cases, 335 U.S. 897.

Respectfully Submitted

MICHAEL P. CLANCEY

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Respondents.

Plaintiff MICHAEL PATRICK CLANCEY, a citizen of the United States, by and through his attorney MARK A. SMITH, respectfully petitions the Court for a writ of mandamus and for a writ of prohibition to require the United States House of Representatives to comply with the mandate of this Court

issued in the case of Powell vs. McCormack, No. 138, October Term, 1968 (395 U.S. 486).

The constitutional articles and provisions involved, the questions presented and the statement of the case with respect to this petition are nearly identical to those presented in Powell vs. McCormack, *supra*. Similarly, the same considerations that justified the ruling in the Powell case should equally warrant the issuance of a writ of mandamus and writ of prohibition to enforce the mandate of this court, for the plaintiff in this case seeks essentially the same relief by way of said writs except that unlike in the Powell case the plaintiff herein would support the expulsion of the subject congressman from his seat in the House and instead is questioning their failure to do so by constitutional means.

REASONS FOR GRANTING THE WRITS

We are of the view that the House of Representatives refusal to comply with this Court's mandate in Powell vs. McCormack, *supra*, can be corrected by writ of mandamus and/or prohibition.

In the case of Marbury vs. Madison 1 Cranch 137, 2 LEd. 60 [1803] the Supreme Court held that it had the power to review Acts of Congress and declare them void if repugnant to the Constitution.

Although the Constitution did not expressly confer this power on the court it was held to be implied from the "Supremacy Clause" [Article VI Section 2] which provides that the Constitution and those "Acts of Congress made in pursuance thereof" shall be the Supreme law of the land.

The court in the Powell case held that the Constitution only demands that elected representatives to the House of Representatives meet three requirements, i.e., be a citizen of the United States, twenty-five years of age or older and a resident of one state. Furthermore, the court said, Article I, Section 5 of the Constitution only gives the House the authority to expel an elected member by a two-thirds vote when he fails to meet the aforementioned standing

requirements. Expulsions for any other reasons or other restrictions placed on a member's eligibility to take his seat in Congress and vote, therefore, would constitute a violation of that representative's constituent's constitutional rights.

STATEMENT OF THE CASE

1. On or about January 26, 1976, the defendants denied plaintiff and other United States Citizens residing within the 40th Congressional District in the State of California, their constitutional right to be represented in the aforementioned House of Representatives by not allowing Congressman, Andrew J. Hinshaw to vote or participate in Congressional matters pursuant to Rule XLIII (43), Section 10 of the House Code of Official Conduct. (Certified copy attached herewith as Exhibit).

2. On or about January 26, 1976, said Congressman Andrew J. Hinshaw was convicted of two counts of felony bribery. Congressman Hinshaw is still allowed his seat in the House of Representatives and is drawing his full salary and benefits. In accordance with the aforementioned resolution said representative is prevented from representing the citizens of the aforementioned 40th District since he may not participate in committees or vote on the House floor.

3. Plaintiff herein contends that said Rule 43, Section 10 of the House Code of Official Conduct is unconstitutional and is in contravention of Article I, Section 5 of the Constitution of these United States of America and other provisions of said Constitution, and asserts that it imposes a taxation upon himself and the other citizens of the said 40th District, without representation.

4. Plaintiff further contends that the aforesaid House resolution is totally defective and inappropriate and that it should be replaced by a House proposal to amend the Constitution of the United States to provide additional qualifications for members of Congress in addition to those prescribed in Article I, Section 5, and therein to establish a Code of Ethics which shall create a method and guidelines

through which a member of Congress can be ~~expelled~~ and replaced for certain wrongdoings.

5. Plaintiff additionally asserts that this matter should be conclusively decided prior to the November General Election since if not, then the case will become automatically moot in light of the fact that no actual controversy will thereafter exist in that Congressman Hinshaw who is making a bid for re-election will either be re-elected or replaced by a successor which, in either event, will take him outside of the scope of the aforementioned Rule 43, Section 10. It is extremely important that the constitutionality of said Rule be decided so that, if unconstitutional, it won't again be imposed anywhere in this country leaving citizens without representation while nevertheless being taxed for it.

JURISDICTION

The relief sought herein is not available in any other court in that; firstly, it is unlikely that the local United States District Court could set a hearing on the within matter before it becomes "moot." Secondly, even if the Court does rule on the matter before the subject Congressman's re-election or replacement, the matter on appeal or certiorari would nevertheless be considered at a time when no actual controversy exists and, on that ground, plaintiff probably would be denied relief.

This honorable Court has held that an actual controversy must exist at all stages of review, not merely when the complaint is filed. The Court "does not sit to decide arguments after events have put them to rest" [DOREMUS v. BOARD OF EDUCATION, 342 U.S. 429 1952]. Relief granted to plaintiff pursuant to this petition is the only adequate protection and remedy available.

WHEREFORE, the said plaintiff respectfully requests:

1. That a writ of mandamus be issued out of this honorable court directing and commanding the United States House of Representatives and other named defendants to vacate Rule

43, Section 10 of the House Code of Official Conduct.

2. That a writ of prohibition be issued out of this honorable court prohibiting the United States House of Representatives and the other named defendants from imposing the dictates of Rule 43, Section 10 of the House Code of Official Conduct or in acting or failing to act in accordance therewith.

3. That the Court grant such other and further relief as may be just in the premises.

VERIFICATION

I am the plaintiff in the above entitled action; I have read the foregoing Motion and Petition and know the contents thereof; and I certify that the same is true of my own knowledge, except as to those matters which are therein stated upon my information or belief, and as to those matters I believe it to be true.

I declare under penalty of perjury, that the foregoing is true and correct.

Executed on May____, 1976 at Orange County, California.

MICHAEL P. CLANCEY

Subscribed and sworn to before me
this____day of____, 1976.

Notary Public in and for said County and State.